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Attorneys for Defendant Facebook, Inc.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

MAXIMILIAN KLEIN, et al., on behalf of
themselves and all others similarly situated,

Plaintiffs,

v.

FACEBOOK, INC., a Delaware Corporation
headquartered in California,

Defendant.

Case No. 5:20-cv-08570-LHK

**DECLARATION OF DAVID Z.
GRINGER IN SUPPORT OF
FACEBOOK'S ADMINISTRATIVE
MOTION FOR CLARIFICATION OF
ORDERS CONSOLIDATING *LOVELAND*
AND *ROSENMAN* WITH *KLEIN***

Judge: Hon. Lucy H. Koh

1 I, David Z. Gringer, declare as follows:

2 1. I am a partner at Wilmer Cutler Pickering Hale and Dorr LLP. I represent
3 Defendant Facebook, Inc. in the above-captioned action.

4 2. On October 7, 2021, we emailed counsel for plaintiffs in the *Rosenman* and
5 *Loveland* actions and asked plaintiffs to advise as to their position on the status of their cases,
6 given their consolidation with *Klein*.

7 3. On October 13, 2021, my colleague Mr. Gallagher spoke by telephone with Mr.
8 Jordan Lurie, counsel for Rosenman, who indicated his view that his client's case is "in abeyance"
9 because his client "does not have an antitrust claim." Mr. Gallagher relayed his phone call with
10 Mr. Lurie to me.

11 4. On October 15, 2021, we received an email from Sam Brown, counsel for
12 Loveland, who indicated that the *Loveland* plaintiffs intended to actively litigate their case against
13 Facebook through a second amended complaint. Counsel for Loveland provided a draft of their
14 second amended complaint, which included a "vaccine hesitant" subclass of the putative User class
15 in *Klein*.

16 5. On November 8, 2021, we emailed counsel for plaintiffs in the *Rosenman* and
17 *Loveland* actions, along with counsel for the User Plaintiffs in *Klein*, and asked whether plaintiffs
18 would stipulate to Facebook's administrative motion for clarification of orders consolidating
19 *Rosenman* and *Loveland* with *Klein*. Counsel for *Rosenman* maintained that their case was "going
20 to be on [the] back burner and in abeyance." Counsel for User Plaintiffs requested a copy of our
21 motion, which we provided. Counsel for *Loveland* requested until November 10, 2021 to review
22 our draft motion and provide their position. We agreed to delay our filing of the motion to
23 accommodate plaintiffs in hopes that a stipulation could be reached. On November 10, 2021,
24 counsel for User Plaintiffs stated that they "oppose [the] motion" and counsel for *Loveland*
25 informed us that they oppose the relief sought. Counsel for User Plaintiffs explained their position
26 as (1) the *Rosenman* and *Loveland* plaintiffs are not named plaintiffs of the putative Consumer
27 Class but (2) dismissal of their claims against Facebook is not required. Counsel for *Loveland* did
28

1 not provide any substantive justification for opposing the relief sought, even after asking for 48
2 hours to evaluate our draft motion. Counsel for *Rosenman* did not respond to the draft motion.

3 I declare under penalty of perjury that the foregoing is true and correct.

4 Executed on this 10th day of November, 2021 in New York, New York.

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6 By: /s/ David Z. Gringer
7 David Z. Gringer
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SIGNATURE ATTESTATION

I am the ECF User whose identification and password are being used to file the foregoing. Pursuant to Civil Local Rule 5-1(i), I hereby attest that the other signatories have concurred in this filing.

Dated: November 10, 2021

/s/ Sonal N. Mehta

Sonal N. Mehta